

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

In re:	§	
	§	CASE NO. 08-35653-KRH-11
CIRCUIT CITY STORES, INC.	§	
	§	Chapter 11
Debtor	§	

**OBJECTION OF THE TEXAS COMPTROLLER AND
TEXAS WORKFORCE COMMISSION TO DEBTORS' MOTION
TO SHORTEN GOVERNMENTAL BAR DATE**

The Texas Comptroller of Public Accounts ("Comptroller") and Texas Workforce Commission ("TWC"), appearing through the Texas Attorney General's Office, object to the Debtors' Motion for Order Pursuant to Bankruptcy Code Sections 105 and 502, et seq. (the "Bar Date Motion").

1. The Bar Date Motion seeks to amend 11 U.S.C. § 502(b)(9) by shortening the governmental bar date to February 27, 2009. There is no authority for such relief, and the Bar Date Motion cites none. The Comptroller and TWC object.

2. Neither 11 U.S.C. § 105 nor any Bankruptcy Rule provides authority for a court to amend the clear, specific statutory language of § 502(b)(9), which provides that a governmental unit's claim "shall" be timely if filed within 180 days after the order for relief.

3. Court orders purportedly amending the statutory government bar date are ineffective, since they conflict with clear statutory provisions. In re George Transfer, Inc., 212 B.R. 475 (Bankr. D. Md. 1997)(governmental unit's claim filed within statutory 180-day bar date was timely despite earlier bar date issued by court pursuant to rule; neither rules nor § 105 can override clear statutory provision of § 502(b)(9)).

4. The Comptroller and TWC also object to Debtors' attempt to deprive governmental units

across the country of due process with respect to the inappropriate attempt to shorten the governmental bar date. The Bar Date Motion was filed at 11:38 p.m. on Tuesday, November 25, and therefore would not likely be read even by creditors on the ECF list until Wednesday, November 26, the day before the Thanksgiving holiday. A response deadline of Wednesday, December 3 and hearing date of Friday, December 5 were noticed at the same time.

5. The Debtors conduct a nationwide business. Many state and local tax authorities and other governmental units have not filed ECF notices of appearance yet in this less-than-month-old case. Mailed notices of the Bar Date Motion and deadlines are unlikely to reach most governmental units until December 1 or later. That is inadequate notice of a December 3 deadline and December 5 hearing. Indeed, the Debtors' efforts to deprive, with inadequate notice, widely-scattered governmental units of statutory rights demonstrates quite well the very problem Congress solved when it amended § 502(b)(9) to provide a 180-day governmental bar date. Governmental units are involuntary creditors who may require additional time to determine if they have claims against debtors. The effort of these Debtors to overrule Congress' judgment and shorten a governmental bar date in an inadequately-noticed hearing conducted less than one month after the petition date is outrageous and should not be countenanced.

Wherefore, the Texas Comptroller and TWC request that the Bar Date Motion be denied insofar as it seeks to shorten any bar date for a governmental unit. The Texas Comptroller and TWC also request such other relief to which they may be entitled.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

KENT C. SULLIVAN
First Assistant Attorney General

DAVID S. MORALES
Deputy Attorney General for Civil Litigation

RONALD R. DEL VENTO
Assistant Attorney General
Chief, Bankruptcy & Collections Division

/s/ Mark Browning

MARK BROWNING
Assistant Attorney General
Texas State Bar No. 03223600
Bankruptcy & Collections Division
P. O. Box 12548
Austin, TX 78711-2548
Telephone: (512) 475-4883
Facsimile: (512) 482-8341

ATTORNEYS FOR THE TEXAS
COMPTROLLER OF PUBLIC ACCOUNTS and
TEXAS WORKFORCE COMMISSION

CERTIFICATE OF SERVICE

I certify that on November 26, 2008, a true copy of the foregoing was served by the method and to the following parties as indicated:

By Regular First Class Mail:

Circuit City Stores, Inc.
9930 Mayland Drive
Richmond, VA 23233

IRS
PO Box 21126
Philadelphia, PA 19114

By Electronic Means as listed on the Court's ECF Noticing System:

Angela Sheffler Abreu aabreu@mccarter.com, rowan20@excite.com
Christopher M. Alston alstc@foster.com, muelk@foster.com

Mark K. Ames mark@taxva.com
Heather Lynn Anderson Heather.Anderson@dol.lps.state.nj.us
Peter Barrett peter.barrett@kutakrock.com,
lynda.wood@kutakrock.com;sara.abrams@kutakrock.com;elenora.allen@kutakrock.com
Raymond William Battaglia rbattaglia@obht.com
Christopher R. Belmonte cbelmonte@ssbb.com, asnow@ssbb.com,pbosswick@ssbb.com
Paula S. Beran pberan@tb-lawfirm.com, dleadbeater@tb-lawfirm.com;stavenner@tb-
lawfirm.com;jsnyder@tb-lawfirm.com
Daniel F. Blanks dblanks@mcguirewoods.com
Paul S. Bliley pbliley@williamsmullen.com,
rcohen@williamsmullen.com;hpollard@williamsmullen.com
Sarah Beckett Boehm sboehm@mcguirewoods.com, kcain@mcguirewoods.com
Wanda Borges borgeslawfirm@aol.com
Timothy Francis Brown brownt@arentfox.com, giamo.christopher@arentfox.com
Mark E. Browning bk-mbrowning@oag.state.tx.us, sherri.simpson@oag.state.tx.us
Paul K. Campsen pkcampsen@kaufcan.com
William H. Casterline wcasterlinejr@blankeith.com, bford@bklawva.com
Charles W. Chotvacs chotvacsc@ballardspahr.com,
aconway@taubman.com;Pollack@ballardspahr.com
Anthony J. Cichello acichello@kb-law.com
Michael A. Condyles michael.condyles@kutakrock.com,
lynda.wood@kutakrock.com;kimberly.pierro@kutakrock.com
Andrew S. Conway aconway@taubman.com
Robert K. Coulter robert.coulter@usdoj.gov,
sharon.abbott@usdoj.gov;USAVAE.ALX.ECF.BANK@usdoj.gov
John M. Craig johncraig@aol.com, russj4478@aol.com
Paul McCourt Curley pcurlay@canfieldbaer.com, tchilders@canfieldbaer.com
Heather D. Dawson hdawson@kkgpc.com, scarlberg@kkgpc.com
Gilbert D. Dean ddean@coleschotz.com
Deborah H. Devan dhd@nqgrg.com
Jaime Sue Dibble jdibble@stinson.com, lbigus@stinson.com
Jennifer V. Doran jdoran@haslaw.com
Seth A. Drucker sdrucker@honigman.com
Sara B. Eagle eagle.sara@pbgc.gov, efile@pbgc.gov
Bradford F. Englander benglander@linowes-law.com, klevie@linowes-
law.com;jkneeland@linowes-law.com;gduvall@linowes-law.com;nconstantino@linowes-
law.com;bnestor@linowes-law.com;aevert@linowes-law.com
Augustus C. Epps aepps@cblaw.com, lthompson@cblaw.com
David J. Ervin dervin@kelleydrye.com, KDWBankruptcyDepartment@kelleydrye.com
Michael P. Falzone mfalzone@hf-law.com, stoboz@hf-law.com
Robert J. Feinstein rfeinstein@pszjlaw.com, rorgel@pszjlaw.com;dharris@pszjlaw.com
John D. Fiero jfiero@pszjlaw.com
Douglas M. Foley dfoley@mcguirewoods.com

Jeremy S. Friedberg jeremy.friedberg@lfff.com,
ecf@lfff.com;gordon.young@lfff.com;steven.leitess@lfff.com
Jeremy S. Friedberg jsf@lfff.com, ecf@lfff.com;gordon.young@lfff.com;steven.leitess@lfff.com
Ellen A. Friedman efriedman@friedumspring.com, ramona.neal@hp.com;ken.higman@hp.com
Brad R. Godshall bgodshall@pszjlaw.com
Jeffrey J. Graham jgraham@taftlaw.com,
dwineinger@taftlaw.com;ecfclerk@taftlaw.com;docket@taftlaw.com
William A. Gray bgray@sandsanderson.com, ludson@sandsanderson.com
Steven H. Greenfeld steveng@cohenbaldinger.com
David A. Greer dgreer@davidgreerlaw.com, ecf@davidgreerlaw.com
Elizabeth L. Gunn egunn@durrettebradshaw.com, sryan@durrettebradshaw.com
Eric A. Handler ehandler@donahue.com, jane@donahue.com
Dion W. Hayes dhayes@mcguirewoods.com
Matthew E. Hoffman mehoffman@duanemorris.com,
Dimassa@duanemorris.com;lstopol@levystopol.com
Brian D. Huben brian.huben@kattenlaw.com,
carole.levine@kattenlaw.com;dustin.branch@kattenlaw.com;donna.carolo@kattenlaw.com
Lisa Taylor Hudson lhudson@sandsanderson.com,
kbice@sandsanderson.com;rarrington@sandsanderson.com
Christopher A. Jones cajones@wtplaw.com, wbatres@wtplaw.com
Douglas D. Kappler dkappler@rdwlawcorp.com
Thomas G. King tking@kech.com, dholmgren@kech.com
Michael S. Kogan mkogan@ecjlaw.com, rfraire@ecjlaw.com
Charles Gideon Korrell gkorrell@dl.com
Leonidas Koutsouftikis lkouts@magruderpc.com, mcook@magruderpc.com
Darryl S. Laddin bkrfilings@agg.com
Kevin A. Lake klake@vanblk.com,
lseaborne@vanblk.com,dszabo@vanblk.com,dalessi@vanblk.com
John J. Lamoureux jlamoureux@carltonfields.com,
lmccullough@carltonfields.com;tpaecf@cfdom.net
Ian S. Landsberg ilandsberg@lm-lawyers.com
Richard E. Lear rlear@hklaw.com
Justin D. Leonard jleonard@balljanik.com
Fredrick J. Levy fjlevy@olshanlaw.com, mmarck@olshanlaw.com;ssallie@olshanlaw.com
James V. Lombardi jvlombardi@rossbanks.com
Henry Pollard Long hlong@hunton.com
John E. Lucian lucian@blankrome.com
Donald K. Ludman dludman@brownconnery.com
Christine D. Lynch clynch@goulstonstorrs.com
A. Carter Magee cmagee@mfgs.com, lcopenhaver@mfgs.com
Richard M. Maseles edvaecf@dor.mo.gov
Bruce H. Matson bruce.matson@leclairryan.com,
kim.lord@leclairryan.com;stacy.beaulieu@leclairryan.com

Kevin R. McCarthy krm@mccarthywhite.com,
wdw@mccarthywhite.com;clm@mccarthywhite.com
Neil E. McCullagh nmccullagh@cantorarkema.com
W. Clarkson McDow, Jr. USTPRegion04.RH.ECF@usdoj.gov
Annemarie G. McGavin annemarie.mcgvain@bipc.com, angela.brandt@bipc.com
Robert P. McIntosh Robert.McIntosh@usdoj.gov
John D. McIntyre jmcintyre@wilsav.com, wedwards@wilsav.com
John G. McJunkin jmcjunkin@mckennalong.com, sparson@mckennalong.com
Jennifer McLain McLemore jmclemore@cblaw.com, avaughn@cblaw.com
Malcolm M. Mitchell mmmitchell@vorys.com,
sbanerjee@vorys.com;jbmullaney@vorys.com;cmbrosius@vorys.com
Michael D. Mueller mmueller@cblaw.com, avaughn@cblaw.com
Kevin M. Newman knewman@menterlaw.com
Alan Michael Noskow anoskow@pattonboggs.com, tbryan@pattonboggs.com
Samuel S. Oh sam.oh@limruger.com
Mary E. Olden molden@mhalaw.com, akauba@mhalaw.com
Laura Otenti lotenti@pbl.com
James A. Pardo jpardo@kslaw.com, thadwilson@kslaw.com
Min Park mpark@cblh.com
Christopher L. Perkins christopher.perkins@leclairryan.com,
stacie.wetzler@leclairryan.com;stacy.beaulieu@leclairryan.com
David M. Poitras dmp@jmbm.com
Jeffrey N. Pomerantz jpomerantz@pszjlaw.com
Courtney E. Pozmantier cpozmantier@ktbslaw.com, mtuchin@ktbslaw.com
Michael Reed danielle.goff@mvalaw.com
Fred B. Ringel fbr@robinsonbrog.com
Philip M. Roberts mroberts@bdlaw.org
Jeremy Brian Root jroot@bklawva.com, tmartin@bklawva.com
Eric Christopher Rusnak eric.rusnak@klgates.com, klgatesbankruptcy@klgates.com
Jeremy W. Ryan jryan@saul.com
Michael J. Sage msage@omm.com, kzeldman@omm.com;bwajda@omm.com
Rebecca L. Saitta rsaitta@wileyrein.com, rours@wileyrein.com
Jeffrey Scharf jeff@taxva.com, tacspe@gmail.com
Ann E. Schmitt aschmitt@culbert-schmitt.com
William H. Schwarzschild tschwarz@williamsmullen.com
Joseph S. Sheerin jsheerin@mcguirewoods.com
Jesse Silverman silvermanj@ballardspahr.com, pollack@ballardspahr.com
Richard F. Stein richard.f.stein@irsounsel.treas.gov
Jeffrey L. Tarkenton jtarkenton@wcsr.com, toross@wcsr.com
Lynn L. Tavenner ltavenner@tb-lawfirm.com, dleadbeater@tb-lawfirm.com;jsnyder@tb-
lawfirm.com;stavenner@tb-lawfirm.com
Roy M. Terry rterry@durrettebradshaw.com, sryan@durrettebradshaw.com
Dylan G. Trache dtrache@wileyrein.com, rours@wileyrein.com

Ronald M. Tucker rtucker@simon.com,
cmartin@simon.com,rwoodruff@simon.com,psummers@simon.com,shclark@simon.com
Robert B. Van Arsdale Robert.B.Van.Arsdale@usdoj.gov, USTPRegion04.RH.ECF@usdoj.gov
John P. Van Beek jvanbeek@ygvb.com,
ldossett@ygvb.com;ematthews@ygvb.com;hcurrier@ygvb.com
Mitchell B. Weitzman mweitzman@beankinney.com, npeelee@beankinney.com
Jennifer J. West jwest@spottsfain.com,
rchappell@spottsfain.com;kligon@spottsfain.com;skelly@spottsfain.com;tmoore@spottsfain.co
m;ecorbett@spottsfain.com;eanderson@spottsfain.com
Robert S. Westermann rwestermann@hunton.com
J. Christian Word chefiling@lw.com
Sheila G. deLa Cruz sdelacruz@hf-law.com, jbsmith@hf-law.com

/s/ Mark Browning
MARK BROWNING